



# U.S. Citizenship and Immigration Services

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**STATEMENT**

**OF**

**LORI SCIALABBA**

**Associate Director**

**Refugee, Asylum and International Operations Directorate**

**U.S. CITIZENSHIP AND IMMIGRATION SERVICES**

**U.S. DEPARTMENT OF HOMELAND SECURITY**

**REGARDING A HEARING ON**

**“INTERCOUNTRY ADOPTION AND IMPLEMENTATION OF THE HAGUE  
CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN  
RESPECT OF INTERCOUNTRY ADOPTION”**

**BEFORE THE**

**HOUSE INTERNATIONAL RELATIONS  
SUBCOMMITTEE ON AFRICA, GLOBAL HUMAN RIGHTS,  
AND INTERNATIONAL OPERATIONS**

**November 14, 2006**

**10:00 PM**

**2172 Rayburn House Office Building**

Mr. Chairman and Members of the Committee:

My name is Lori Scialabba, and I am Associate Director of the Refugee, Asylum and International Operations Directorate of U.S. Citizenship and Immigration Services (USCIS). I am honored to have this opportunity to address the Committee on ongoing efforts to implement changes to the intercountry adoptions process in accordance with the Intercountry Adoption Act of 2000 (IAA) and the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Convention). The employees of USCIS are proud of the important role we play in assisting U.S. citizens seeking to adopt children from other countries. As a result of our collective efforts, more than 200,000 foreign-born children have been adopted into families in the United States over the past decade. USCIS remains committed to improving and streamlining its processes, while strengthening measures to protect children's interests in the process. It is the primary goal of USCIS's administration of the intercountry adoption program to ensure that adoptions are in the children's best interests.

I also would like to take this opportunity to thank our colleagues at the Department of State for their ongoing partnership with USCIS as we work towards the implementation of the Hague Convention. This long and continuing process has been a collaborative effort between USCIS and the Department of State and has involved a great amount of teamwork and cooperation. Today, my colleagues from the Department of State and I will share with you where we each are in the current process and provide an image of what we are striving to achieve with our Hague regulations.

## Overview

In recent years, the United States has seen an increase in the number of children from other countries adopted by U.S. citizens – from 19,087 children in fiscal year 2001 to more than 22,700 children in fiscal year 2005.<sup>1</sup> USCIS remains committed to improving and streamlining its processes, while strengthening the protection of children in the system.

## Recent Achievements in Intercountry Adoption

USCIS understands the critical role it plays in the process of intercountry adoptions.

There are several vehicles USCIS uses in its efforts to assist prospective adoptive parents and children through the intercountry adoption process. One such vehicle is the Child Citizenship Act (CCA).

### *Child Citizenship Act Program*

The CCA became effective on February 27, 2001. The act amended section 320 of the Immigration and Nationality Act (INA) by providing U.S. citizenship to certain foreign-born children. Under the CCA, children with a full and final adoption abroad who

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<sup>1</sup> The following table shows five years of data on the number of children from other countries adopted by U.S. citizens:

Fiscal Year (Oct. 1 – Sept. 30)	Immigrants-Orphans Adopted by U.S. Citizens
2005	22,710
2004	22,911
2003	21,320
2002	21,100
2001	19,087
2000	18,120

*Source: Office of Immigration Statistics, Yearbook of Immigration Statistics (data includes 1) orphans adopted abroad, admitted to US (IR3s), 2) orphans adopted abroad, adjustments in the US (IR8s), 3) orphans to be adopted, admitted to the US (IR4s), and 4) orphans to be adopted, adjustments in the US (IR9s).*

immigrate to the United States with a U.S. citizen parent automatically acquire U.S. citizenship upon admission to the U.S. as an immigrant. Children who immigrate and have their adoption finalized in the United States become citizens at the time of the final U.S. adoption. A “full and final adoption” exists, for immigration purposes, if (1) the adoptive parents completed the adoption abroad according to the laws of the child’s country, so that the adoptive parents are now the child’s legal parents for all purposes, and (2) BOTH parents, when two parents are adopting, meet the child either before or during the adoption proceeding abroad. The child receives an “IR-3” immigrant visa if both of these requirements are met. If not, then the child receives an “IR-4” immigrant visa. For example, if only one parent saw the child, but the foreign proceeding was an actual adoption proceeding, an IR-4 visa would be the proper visa. An IR-4 visa would also be the proper visa if both parents saw the child, but the foreign proceeding was a guardianship or custody proceeding, rather than an actual adoption proceeding. For a child who enters with an IR-4 visa, the parents must then adopt the child in the United States, if there was no adoption abroad. If there was an adoption abroad, but the parents did not both meet the child before or during the adoption, then the parents must establish that the foreign adoption is recognized under the law of their home State. This recognition may be established either by obtaining a formal court order recognizing the adoption (sometimes called “re-adoption”) or by establishing that the home State’s law recognized the foreign adoption without the need for a formal court proceeding.

If a citizen believes that his or her adopted child acquired citizenship under the CCA, the parent may file an application for a certificate of citizenship. In addition to this standard

practice, however, USCIS also implemented the requirements of the CCA by creating a special program that processes citizenship for children adopted abroad by U.S. citizens. The program began on January 1, 2004, and is located in the USCIS Buffalo, New York District Office. Through the program, USCIS-Buffalo receives and reviews all immigrant visas for children admitted to the United States who were adopted abroad (that is, those issued IR-3 visas), and issues a certificate of citizenship to those children who meet the requirements under section 320 for automatic acquisition of citizenship. Under this special program, no formal application for a certificate of citizenship is required, if the child meets these requirements.

To date, the CCA program has been a success. From its inception on January 1, 2004 to October 31, 2006, the program has produced 42,539 certificates of citizenship for adopted children who entered the United States with an IR-3 visa and were found to have automatically acquired citizenship under section 320.

It is important to note that just 34 days, on average, elapse from the time the child enters the United States with an IR-3 immigrant visa to the time a certificate of citizenship is produced for the adopted child. While proud of this accomplishment, USCIS continues to strive to maintain and improve the efficiency of this program.

### **Intercountry Adoptions Working Group**

In March 2006 USCIS chartered the Intercountry Adoptions Working Group consisting of representatives of various components within USCIS that play a role in intercountry

adoption, as well as representatives from the Department of State's Bureau of Consular Affairs, Office of Children's Issues. The working group is responsible for addressing three issues:

- Near-term improvements and streamlining of USCIS' current intercountry adoption process;
- Long-term redesign of USCIS' intercountry adoption process to strengthen customer service and integrity; and
- Promulgation of USCIS regulations, and potential other changes, necessary to implement the Hague Convention.

We are already seeing progress from the efforts of this working group, particularly in the area of coordination with the Department of State. For example, as a result of increased communication, USCIS and the Department of State have agreed to provide joint quarterly updates to the Congressional Coalition on Adoption Institute concerning implementation of the Hague Convention and other pressing intercountry adoption issues. Updates were provided on June 12<sup>th</sup> and September 25<sup>th</sup> of this year.

### **The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Convention)**

The Hague Convention is a multilateral treaty that was approved on May 29, 1993. The Convention covers the adoption of a child who habitually resides in one Convention country by adoptive parent or parents who habitually reside in another Convention country, when the child is going to immigrate to the adoptive parents' country as a result

of, or for the purpose of, the adoption. The Convention establishes certain internationally agreed-upon minimum norms and procedures. The goal of the Hague Convention is to protect the children involved in intercountry adoptions and to prevent abuses.

The United States signed the Hague Convention on March 31, 1994, signaling its intent to proceed with efforts to ratify the Convention. In September 2000, the Senate consented to the President's ratification of the Convention, but the Senate conditioned this consent on the adoption of the laws and regulations necessary to carry out the principles of the Convention.

On October 6, 2000, President Clinton signed the Intercountry Adoption Act that, among other things, establishes the domestic legal framework for implementing our obligations under the Hague Convention.

Since that time, efforts have been under way to issue federal regulations to set forth:

- The requirements entities must meet to qualify for designation to accredit or approve adoption service providers;
- The standards agencies and individuals must meet to become Hague Convention accredited or approved as adoption service providers; and
- The procedures governing Hague Convention adoptions, both for children coming to the United States and those going from the United States to another country, based on a Hague Convention adoption.

I will address only part of the third point—the procedures for U.S. citizens seeking to adopt children from “Hague countries” —as this is where USCIS has responsibility under the Intercountry Adoption Act. USCIS is responsible for:

- Determinations of the eligibility and suitability of a prospective adoptive parent to adopt a child from another Hague country; and
- Adjudications of petitions to classify a child as a “Hague child.”

Through consultation, USCIS and Department of State have agreed to a framework for implementing the IAA and the Hague Convention. My remarks today are reflective of that general framework.

Once the IAA amendments to the INA become effective, a child who is habitually residing in a Hague country will no longer be eligible for classification as an “orphan” under section 101(b)(1)(F) of the INA, if the child will be moving to the United States in connection with an adoption. Any such adoption must conform to the Hague process and procedures.

The definition of a “Hague child” in section 101(b)(1)(G) of the INA will broaden the definition of a child who may be adopted to include a child with two living biological parents who are incapable of providing proper care to the child. The definition of a child who may be adopted will be further expanded to include a child with a “sole or surviving parent” to account for situations where the child had two parents, but one parent died,



disappeared, abandoned, or deserted the child, and the remaining sole or surviving parent freely has given a written irrevocable release for emigration and adoption.

This distinction and expansion is noteworthy because, currently, a child may not be classified as an orphan, and hence be eligible for adoption, based upon a release from two living parents. Additionally, in orphan cases, a father may not be considered to be a “sole parent” if the mother had disappeared or deserted or abandoned the child. Under current law applicable to orphan cases, only the mother of an illegitimate child is considered to be a sole parent, and only if it is established that she is incapable of providing proper care.

The IAA’s expansion of these definitions will provide opportunities for more children to become eligible for adoption, as long as the safeguards and requirements of the Hague Convention have been met.

In consultation with the State Department, USCIS is currently drafting proposed regulations under the IAA to set forth the procedures and requirements that must be followed by prospective parents in order for USCIS to determine their eligibility and suitability to adopt a child from a Hague country.

As with any rule, once a proposed rule is published, interested persons can submit comments. We have been following closely the comments to the several Department of State rules implementing the Hague Convention and the IAA. We have taken the

relevant concerns raised in those contexts under consideration to inform our regulatory development. We look forward to the constructive and valuable input we will receive from concerned parties as part of the rulemaking process.

We anticipate that our proposed rule's approach to the stages of adjudication to determine the eligibility of a child for Hague classification will ensure that the requirements of the Hague convention and the IAA have been complied with and the best interests of the child have been met.

## **Conclusion**

As reflected in my remarks before the Committee today, intercountry adoptions involve a multifaceted process where multiple, discrete decisions must be made regarding both a child overseas and prospective adoptive parents. The sequencing of events and coordination between the Department of State and USCIS has become even more critical under the Hague Convention and the Intercountry Adoption Act. USCIS, in partnership with the Department of State, is committed to making the process work for birth parents, adoptive parents and above all the children involved in the intercountry adoptions, while adhering to the requirements of the participating countries. Thank you again for the opportunity to speak with you on this important subject. I would be pleased to answer any questions the Committee may have.